FERPA, CHALLENGES FACING SCHOOL NURSES & DISCIPLINARY ACTIONS

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Definition

- Family Education Rights and Privacy Act of 1974 (Buckley Amendment)
  - Protects Privacy of student educational records
  - Guarantees students the right to review education records and seek to amend those records
  - Gives students the right to limit disclosure of information from their records
FERPA Amended in 1998

- Allows release of final results of disciplinary proceeding against an accused student who is alleged perpetrator of a “crime of violence or non-forcible sex offense” who was found responsible for violation of related institutional rules.

- Allows disclosure to parent or legal guardian regarding student’s violation of any law or instructional rule or policy governing use or possession of alcohol or a controlled substance is student under 21.
Other Amendments

- 2000 Campus Sex Crimes Prevention Act which also allows disclosure of information concerning registered sex offenders.
- 2001 USA Patriot Act which allows Attorney General to collect and use education records relevant to investigation and prosecution of crimes related to acts of terrorism.
Relationship of HIPAA and FERPA

- HIPAA excludes records covered by FERPA
- FERPA governs the disclosure of information from the education record which includes immunizations
Laws Governing the Transfer of Immunization Information

- Disclosure to public health: HIPAA and state/local law
- Disclosure from public health: HIPAA and/or state/local law
- Disclosure to schools: HIPAA and state/local law
- Disclosure from schools: FERPA
Educational Records Covered by FERPA

- Sole possession records—personal notes or records retained for his own personal record. Not instructor’s notes.
- Peer graded classwork once instructors collects and leaves classroom.
- Law enforcement records—maintained and revealed to only law enforcement agencies.
Educational Records Covered by FERPA

- Employment records related to non-work study employment situations
- Medical records created by health care professional and used only for treatment of the student.
- Alumni records related only to alumni donations and activities with alumni association.
Definition of Education Records

- Those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution.
Who Can Access Student Records Without Consent?

- Custodial and non custodial parents unless a court order or State law provides to the contrary.
- School must provide parent opportunity to review within 45 days after request.
Amendment of Education Records

- At parent’s request, school must consider but not required to amend.
When Does FERPA Permit a School Non-Consensually to Disclose Personally Identifiable Information

- When used for directory information—non harmful information
  - School gives public notice of types of information that will be disclosed
  - Comptroller General of United States
  - In connection with financial aid
  - State and local authorities pursuant to statute concerning juvenile justice
  - Organizations conducting studies
  - Comply with judicial order
  - In connection with health or safety emergency
Annual Notification

- School must annually notify parents and students in attendance of their rights under FERPA
  - Student handbook
  - Notice to parents
  - Calendar of events
  - School’s website
  - Local Newspaper
  - Posted in central location at school
  - Annual notice of rights
### Summary

- **If** health information is part of education record, it is subject to FERPA.
- **If** health information is not part of education record, and it is transmitted electronically in connection with a HIPAA transaction, it is subject to HIPAA and not subject to FERPA.
Challenges Facing School Nurses

- Complex student needs
  - Asthma
  - Diabetes
  - Seizure disorders
  - Disabled children
  - Obesity
  - Domestic abuse
Challenges Facing School Nurses

Figure 2

- Any condition
- Asthma
- Obesity
- Behavior/learning problem
- Other physical condition

Note: Three nationally representative cohorts were studied over a period of six years.
Challenges Facing School Nurses

- Insufficient Funding
  - CDC states 75% of every healthcare dollar goes to chronic conditions
  - Correlation between lower grades and youth health risk behaviors such as smoking, acts of violence, and unsafe sex
Challenges Facing School Nurses

- Serving two masters
  - Educators answer to local taxpayers and meet state and federal academic standards
  - Health care answers to insurers, licensing boards, and professional associations for quality of care as well of scope of practice issues
Challenges Facing School Nurses

- Staffing patterns

Figure 1  School Nurse (RN)–to–Student Ratio by State, 2009

- >1:750
- 1:750–1,000
- 1:1,000–2,000
- 1:2,000–3,000
- <1:4,000

State mandates that districts employ school nurses

One nurse for every 750 students is the U.S. government's Healthy People 2010 recommended minimum.

Challenges Facing School Nurses

- Research indicates that school nurse—when present every day—advance the twin goals of improving health and educational outcomes
- Goal of federal government is a 1:750 ratio
Challenges Facing School Nurses

- How many Nurses Do Schools Need?
- Districts must consider several factors
  - Student Demographics
    - How many students in good health?
    - Chronic conditions
    - Mental health problems
    - Multiple disabilities
  - Staffing patterns
    - Full-time or part-time
    - One building or many
    - Alone or as part of a team
Challenges Facing School Nurses

- Districts must consider several factors
  - Available Support Services
    - District
    - Regional
    - State
  - Access to Care
    - Affordable health services readily available
Challenges Facing School Nurses

- What qualifies a school nurse for practice?
  - Assess student health
  - Develop and execute plans for management of care
  - Act as first responders
  - Engage in public health functions such as disease surveillance, immunization compliance and health promotion
Challenges Facing School Nurses

- Who is responsible for?
  - LVNs
    - Lack training for full scope of school nursing practice
  - Unlicensed personnel
Challenges Facing School Nurses

- Risk Management for delegation of school nurse tasks
  - Protocols
    - Physician order
    - Parent permission
    - Trained staff
    - Follow appropriate procedure
    - Original container
    - All medications locked up
    - Medication log
Challenges Facing School Nurses

- Protocols
  - Emergency medications may be carried with proper procedure
  - Confidentiality
  - Acceptance of liability from school district
Challenges Facing School Nurses

- How is it done?
  - Protocols
    - Medication administration regulations
    - Team approach—School nurse, paraprofessionals and other staff
    - Must be trained to follow proper protocols and recognize complications
      - Record keeping
      - Ask questions
      - Confidentiality
Challenges Facing School Nurses

- Provide technical support to school districts
- Provide training for school personnel under guidance of school nurse
- Provide guidance for compliance and safety to school nurses and others
- Develop and maintain partnerships with other medical/health providers
Challenges Facing School Nurses

- Increase in chronic illness
- Increased medication administration
- Advances in medical research and technology
- Complex level of care needs
- Risks to student safety
- Standardized health care practice
Disciplinary Actions

Who is in charge?

- Federal Tort Claims Act
  - Personal liability tort litigations against federal employees
    - Whether employee is named in caption
    - Whether there is an allegation that employee acted wrongfully
    - Whether the prayer for relief seeks monetary damages
  - School nurses are covered
Disciplinary Actions
Who is in charge?

- What the Federal Tort Claims Act does not do?
  - No choice of attorneys
  - Must do what government tells you to
  - No protection against a disciplinary action
Disciplinary Actions
Who is in charge?

- Protection against disciplinary action
  - Document, document, document
  - Malpractice/disciplinary insurance
    - Allows you do have your own attorney
    - Provides you disciplinary coverage if there is a complaint to the BRN
Disciplinary Action
Who is in charge?

- How to choose an insurance carrier
  - Occurrence coverage
  - Highest amount of coverage
  - Allows you to choose your own attorney
  - Has an advisory panel made up of RNs, NPs, CNS
  - Easy to contact and work with in any situation
Disciplinary Action
Who is in charge?

- What insurance company provides all of the above
  - Only one to date: Nurses Service Organization
Disciplinary Action
Who is in charge?

- What happens in a disciplinary action?
  - Letter from the BRN
  - Meeting with investigator
  - Referred to Attorney General
Disciplinary Action
Who is in charge?

- What are the possible outcomes of a disciplinary action?
  - Dismissal
  - Citation
  - Public Reproval
  - Suspension
  - Revocation
  - Revocation with a Stay
Preventing Disciplinary Actions

- Know your scope of practice
- Know your Nurse Practice Act
- Education and training
- File sentinel event reports
- Parent relationships
- Follow-up
- Document, Document, Document
Conclusion

- School nurses are held to the highest standard. The only way to protect yourselves is to be confident in the people working under you.
- Make sure you have your own malpractice and disciplinary insurance.
References

http://www.medicalprivacy.unc.edu/pdfs/schools.pdf
http://www.ksba.org/legalhipaa.htm

The Green Book: Guidelines for Provision of Specialized Physical Healthcare Services in California Schools.
Questions?